

REMARKS

Original Claims 1-8 was rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley (U.S. Patent No. 3,775,745) in view of Augustin et al. (WO 03/081554 A1). In making that rejection the Examiner stated:

Kelly discloses that a safe operating temperature profile and other safe operating parameters during flight of the helicopter may be monitored (see column 1, line 33 – column 2, line 10). Augustin also discloses that several safe operating parameters may be monitored during the operation of the helicopter (see Abstract). The combined teaching of the two inventors reasonably appear to meet the limitations of the claims.

Claims 1-4 and 6-9 have been cancelled.

It is respectfully submitted that amended claim 5 is clearly and patentably distinguished over the cited art. To be more specific, amended claim 5 calls for a collective and a tactile warning device including a collective shaker operatively connected to the collective shaker. Claim 5 further calls for means to activate said tactile warning device when the actual turbine output temperature during startup falls outside of the safe turbine output temperature profile during startup and when the safe turbine output temperature or other safe operating parameters are exceeded during flight operations. In addition, claim 5 now calls for means for increasing the magnitude of the tactile warning when the turbine output temperature reaches its maximum operating temperature and means for increasing the frequency of the tactile warning in response to a pending dangerous condition when the impending dangerous condition is imminent. It is respectfully submitted that the cited art including the Greene patent do not suggest this combination of elements. Accordingly, it is Applicant's contention that amended claim 5 should be allowed.

Original claim 10 was also rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley in view of Augustin et al. as applied to Claims 1-8 and further

in view of Greene et al. (U.S. Patent No. 5,986,582). It is respectfully submitted that amended claim 10 now calls for activating the tactile warning at a first pre-selected magnitude when an actual parameter for a dangerous condition is approached, means for increasing the magnitude of the tactile warning when a dangerous condition exists; and in which the frequency of the tactile warning in response to an impending dangerous condition is increased when the dangerous condition is imminent. It is respectfully submitted that the combination of the above steps is not disclosed or suggested by the prior art.

It is a basic principle of the United States Patent Laws that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of the Applicant's disclosure. It is improper to create a hypothetical or fictional combination which allegedly renders a claim obvious unless there is some direction in the selected prior art patents to combine the selected teaching in a manner to negate the patentability of the claimed subject matter. Orthopedic Equipment Co., Inc. vs. the United States, 217 USPQ 193 (Fed. Cir. 1983). In that decision the Court pointed out that a piecemeal reconstruction of the prior art in light of an Applicant's disclosure is not a proper basis for an obvious rejection under 35 U.S.C. § 103. The Court stated (page 199):

“As been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper in a court of law.”

Accordingly, it is Applicant's contention that amended claim 10 should be allowed.

Since all of the claims are now in proper form and clearly and patentably distinguished over the cited art, prompt favorable action is requested.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at (703) 837-9600 Ext. 17 to discuss the steps necessary for placing the application in condition for allowance. All correspondence should continue to be sent to the below-listed address.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 04-0753. Please credit any overpayment to deposit Account No. 04-0753.

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Respectfully submitted,

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Attachments